



Reprinted  
February 6, 2009

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## HOUSE BILL No. 1090

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DIGEST OF HB 1090 (Updated February 5, 2009 3:20 pm - DI 97)

**Citations Affected:** IC 27-7; IC 27-8; noncode.

**Synopsis:** Primary motor vehicle coverage. Relocates and repeals the current law concerning primary motor vehicle coverage. Provides for determination of the motor vehicle insurance coverage that is primary for passengers in a motor vehicle and for motor vehicle rentals.

**Effective:** July 1, 2009.

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**Fry, Torr**

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January 7, 2009, read first time and referred to Committee on Insurance.  
February 2, 2009, amended, reported — Do Pass.  
February 5, 2009, read second time, amended, ordered engrossed.

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HB 1090—LS 6682/DI 97+



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February 6, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1090

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A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 27-7-14 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]:  
4 **Chapter 14. Primary Motor Vehicle Insurance Coverage**  
5 **Sec. 1. This chapter applies only to policies affording motor**  
6 **vehicle insurance coverage that are issued or renewed after August**  
7 **31, 1983.**  
8 **Sec. 2. (a) The definitions set forth in this section apply**  
9 **throughout this chapter.**  
10 **(b) "Garage liability policy" refers to any motor vehicle liability**  
11 **insurance policy that affords coverage to a named insured engaged**  
12 **in the business of selling, leasing, repairing, servicing, delivering,**  
13 **testing, road testing, parking, or storing motor vehicles, but does**  
14 **not refer to a motor vehicle liability insurance policy that affords**  
15 **coverage to a vehicle used in the business of transporting property**  
16 **for hire.**  
17 **(c) "Motor vehicle insurance coverage" means any type of**

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insurance coverage described in IC 27-1-5-1, Class 2(f).

(d) "Permittee" means any person who is granted permission to operate a motor vehicle by the owner of the motor vehicle.

Sec. 3. (a) This section does not apply to cases covered by section 6 or 7 of this chapter.

(b) In any case arising from a permittee's use of a motor vehicle for which the owner of the vehicle has motor vehicle insurance coverage, the owner's motor vehicle insurance coverage is considered primary if both of the following apply:

(1) The vehicle, at the time damage occurred, was operated with the permission of the owner of the motor vehicle.

(2) The use was within the scope of the permission granted.

(c) The permittee may not recover under any other motor vehicle insurance coverage available to the permittee until the limit of all coverage available to the permittee under the owner's policy is first exhausted.

(d) In a case arising from an owner's use of a motor vehicle for which the owner of the vehicle has motor vehicle insurance coverage, the owner's motor vehicle insurance policy is considered primary for any claim made by a passenger in the motor vehicle.

(e) A passenger in a motor vehicle at the time a case described in subsection (b) or (d) arises may not recover under any other motor vehicle insurance coverage available to the passenger until the limit of all coverage available to the passenger under the owner's policy is first exhausted.

Sec. 4. (a) When a claim arises from the operation of a motor vehicle leased under a written lease agreement, if under the agreement the lessee agrees to provide coverage for damage resulting from his operation of the vehicle, then the motor vehicle insurance coverage of the lessee is primary. No claim may be made against any coverage available for the vehicle by the lessor until the limits of the motor vehicle insurance coverage provided by the lessee for the vehicle are exhausted.

(b) When a claim arises from the operation of a motor vehicle that is used in the business of transporting property for hire and leased under a written lease agreement, if under the agreement the lessor and lessee agree as to which coverage of the parties' motor vehicle insurance is primary coverage, then the policy of insurance providing that coverage is primary and no claim may be made against any other coverage for the vehicle until the limits of that policy are exhausted.

Sec. 5. (a) As used in this section, "rental agreement" means a

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1 written contract:

2 (1) that authorizes a renter to use a motor vehicle made  
3 available by a rental company;

4 (2) under which a charge for use of the motor vehicle is made  
5 at a periodic rate; and

6 (3) under which title to the motor vehicle is not transferred to  
7 the renter.

8 (b) When:

9 (1) a claim arises from the operation of a motor vehicle that  
10 is rented under a rental agreement; and

11 (2) under the rental agreement, the renter agrees to provide  
12 insurance coverage for damage resulting from the renter's  
13 operation of the motor vehicle;

14 the insurance coverage provided by the renter is primary.

15 (c) A claim described in subsection (b) may not be made by the  
16 rental company against any insurance coverage available for the  
17 motor vehicle until the limits of the insurance coverage provided  
18 by the renter are exhausted.

19 (d) When:

20 (1) a claim arises from the operation of a motor vehicle that  
21 is:

22 (A) used in the business of transporting property for hire;  
23 and

24 (B) rented under a rental agreement; and

25 (2) under the rental agreement, the rental company and  
26 renter agree as to which of the parties' insurance coverage is  
27 primary for damage resulting from the renter's operation of  
28 the motor vehicle;

29 the agreed upon primary insurance coverage is primary.

30 (e) A claim described in subsection (d) may not be made against  
31 any insurance coverage available for the motor vehicle until the  
32 limits of the agreed upon primary insurance coverage are  
33 exhausted.

34 Sec. 6. (a) This section applies if the only motor vehicle  
35 insurance coverage provided by the owner of the motor vehicle is  
36 under a garage liability policy.

37 (b) Notwithstanding section 3 of this chapter, any coverage  
38 available to the permittee is primary.

39 (c) Recovery may not be made under the garage liability policy  
40 until the limits of all coverage available to the permittee have been  
41 exhausted.

42 Sec. 7. (a) This section applies to a motor vehicle while under the

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control of either of the following:

(1) A bailee.

(2) An agent or employee of a bailee.

(b) As used in this section, "bailee" refers only to a person who is in the business of storing, parking, servicing, or repairing vehicles.

(c) Notwithstanding section 3 of this chapter, any coverage available to the bailee is primary.

(d) Recovery may not be made under the vehicle owner's policy until the limits of all motor vehicle insurance coverage available to the bailee have been exhausted.

SECTION 2. IC 27-8-9 IS REPEALED [EFFECTIVE JULY 1, 2009]

SECTION 3. [EFFECTIVE JULY 1, 2009] (a) IC 27-7-14-3(c), (d), and (e), as added by this act, apply to a case arising after June 30, 2009.

(b) Notwithstanding the repeal of IC 27-8-9-7 by this act, IC 27-8-9-7, before its repeal by this act, applies to a case arising before July 1, 2009.

(c) IC 27-7-14-5, as added by this act, applies to a claim arising after June 30, 2009.

(d) This SECTION expires July 1, 2014.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1090, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 9, delete "or person in legal possession".

Page 1, line 14, strike "provided by" and insert "**available to the permittee under**".

Page 2, line 5, delete "provided by" and insert "**available to the passenger under**".

and when so amended that said bill do pass.

(Reference is to HB 1090 as introduced.)

FRY, Chair

Committee Vote: yeas 8, nays 0.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1090 be amended to read as follows:

Page 1, delete lines 1 through 14, begin a new paragraph and insert: "SECTION 1. IC 27-7-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 14. Primary Motor Vehicle Insurance Coverage**

**Sec. 1. This chapter applies only to policies affording motor vehicle insurance coverage that are issued or renewed after August 31, 1983.**

**Sec. 2. (a) The definitions set forth in this section apply throughout this chapter.**

**(b) "Garage liability policy" refers to any motor vehicle liability insurance policy that affords coverage to a named insured engaged in the business of selling, leasing, repairing, servicing, delivering, testing, road testing, parking, or storing motor vehicles, but does not refer to a motor vehicle liability insurance policy that affords coverage to a vehicle used in the business of transporting property for hire.**

**(c) "Motor vehicle insurance coverage" means any type of insurance coverage described in IC 27-1-5-1, Class 2(f).**

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(d) "Permittee" means any person who is granted permission to operate a motor vehicle by the owner of the motor vehicle.

**Sec. 3. (a)** This section does not apply to cases covered by section 6 or 7 of this chapter.

(b) In any case arising from a permittee's use of a motor vehicle for which the owner of the vehicle has motor vehicle insurance coverage, the owner's motor vehicle insurance coverage is considered primary if both of the following apply:

(1) The vehicle, at the time damage occurred, was operated with the permission of the owner of the motor vehicle.

(2) The use was within the scope of the permission granted.

(c) The permittee may not recover under any other motor vehicle insurance coverage available to the permittee until the limit of all coverage available to the permittee under the owner's policy is first exhausted."

Page 2, delete lines 7 through 9, begin a new paragraph and insert:

**"Sec. 4. (a)** When a claim arises from the operation of a motor vehicle leased under a written lease agreement, if under the agreement the lessee agrees to provide coverage for damage resulting from his operation of the vehicle, then the motor vehicle insurance coverage of the lessee is primary. No claim may be made against any coverage available for the vehicle by the lessor until the limits of the motor vehicle insurance coverage provided by the lessee for the vehicle are exhausted.

(b) When a claim arises from the operation of a motor vehicle that is used in the business of transporting property for hire and leased under a written lease agreement, if under the agreement the lessor and lessee agree as to which coverage of the parties' motor vehicle insurance is primary coverage, then the policy of insurance providing that coverage is primary and no claim may be made against any other coverage for the vehicle until the limits of that policy are exhausted.

**Sec. 5. (a)** As used in this section, "rental agreement" means a written contract:

(1) that authorizes a renter to use a motor vehicle made available by a rental company;

(2) under which a charge for use of the motor vehicle is made at a periodic rate; and

(3) under which title to the motor vehicle is not transferred to the renter.

(b) When:

(1) a claim arises from the operation of a motor vehicle that

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is rented under a rental agreement; and

(2) under the rental agreement, the renter agrees to provide insurance coverage for damage resulting from the renter's operation of the motor vehicle;

the insurance coverage provided by the renter is primary.

(c) A claim described in subsection (b) may not be made by the rental company against any insurance coverage available for the motor vehicle until the limits of the insurance coverage provided by the renter are exhausted.

(d) When:

(1) a claim arises from the operation of a motor vehicle that is:

(A) used in the business of transporting property for hire; and

(B) rented under a rental agreement; and

(2) under the rental agreement, the rental company and renter agree as to which of the parties' insurance coverage is primary for damage resulting from the renter's operation of the motor vehicle;

the agreed upon primary insurance coverage is primary.

(e) A claim described in subsection (d) may not be made against any insurance coverage available for the motor vehicle until the limits of the agreed upon primary insurance coverage are exhausted.

Sec. 6. (a) This section applies if the only motor vehicle insurance coverage provided by the owner of the motor vehicle is under a garage liability policy.

(b) Notwithstanding section 3 of this chapter, any coverage available to the permittee is primary.

(c) Recovery may not be made under the garage liability policy until the limits of all coverage available to the permittee have been exhausted.

Sec. 7. (a) This section applies to a motor vehicle while under the control of either of the following:

(1) A bailee.

(2) An agent or employee of a bailee.

(b) As used in this section, "bailee" refers only to a person who is in the business of storing, parking, servicing, or repairing vehicles.

(c) Notwithstanding section 3 of this chapter, any coverage available to the bailee is primary.

(d) Recovery may not be made under the vehicle owner's policy

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**until the limits of all motor vehicle insurance coverage available to the bailee have been exhausted.**

SECTION 2. IC 27-8-9 IS REPEALED [EFFECTIVE JULY 1, 2009]

SECTION 3. [EFFECTIVE JULY 1, 2009] (a) **IC 27-7-14-3(c), (d), and (e), as added by this act, apply to a case arising after June 30, 2009.**

(b) **Notwithstanding the repeal of IC 27-8-9-7 by this act, IC 27-8-9-7, before its repeal by this act, applies to a case arising before July 1, 2009.**

(c) **IC 27-7-14-5, as added by this act, applies to a claim arising after June 30, 2009.**

(d) **This SECTION expires July 1, 2014."**

(Reference is to HB 1090 as printed February 3, 2009.)

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